

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

WESTERN POWER AND EQUIPMENT

Employer

and

Case 19-RC-13791

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCALS 302 AND 612, AFL-CIO

Joint-Petitioners

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>1</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organizations involved jointly claim to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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<sup>1</sup> Briefs were received from both parties and were duly considered. While the Employer's brief was one day late due to an error on the part of its counsel, I have accepted it and considered it fully inasmuch as the counsel for Joint Petitioners does not object to said receipt and its late arrival does not affect my timely issuance of this Decision and Direction of Election.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All service technicians employed by the Employer at its Auburn, Washington, facility; excluding all parts handlers, lowboy drivers, confidential employees, guards and supervisors as defined in the Act.

The Employer is engaged in the sale and repair of construction equipment at its facility located in Auburn, Washington. Charles Blanton is the facility manager. Its service department manager is John Billing and its parts department manager is Greg Chastain. The Joint Petitioners seek to represent a unit limited to approximately 19 service technicians (or mechanics), while the Employer would include in that unit the approximately ten parts department employees. The only collective bargaining history ended at least seven years ago, when the Employer purchased the facility from Case Power and Equipment. While Case operated it, the service technicians were represented by a third union; the parts department employees were excluded from that unit.<sup>2</sup>

The Auburn facility is housed in a single building surrounded by approximately seven acres. The service and parts departments are separated from each other by walls. Additionally, the building houses a sales and administrative area which is separate from both service and parts. As noted, the service and parts departments have different supervisors.

Service technicians are charged with the responsibility of diagnosing malfunctioning equipment which is brought to it by customers, determining how best to repair it and effecting the necessary repairs. They also perform a "pre-delivery" service, which consists of preparing and testing new equipment for customers who just purchased it. They work in service bays or in the field where the equipment has broken down, and because their work is by its nature dirty, the Employer supplies each technician a set of clean coveralls daily and provides laundry service as well. These employees use a change room upstairs, next to which is one of two employee lunchrooms. They eat lunch in that lunchroom as a group, while other employees use the other lunchroom.<sup>3</sup> Each technician supplies his own tools, whose value may reach \$25,000. The Employer provides some specialty tools which are not needed regularly, such as "a gigantic torque wrench." The record does not reflect that any of the service technicians has attended apprenticeship programs to gain the training necessary to perform their jobs. However, at least one has attended a two-year course in a community college for that purpose and some are hired from trade schools. Additionally, some have progressed from working in the lube rack or wash rack to become technicians. All service technicians attend periodic training sessions, generally lasting a week, which are provided by Case Power, the company which produces most of the equipment repaired by the Employer. Some of these sessions are held in other states. This training is provided and paid for by the Employer.

Parts department employees, or parts handlers, receive, store and distribute equipment parts. One, called the "parts expediter" by the service technicians, handles their parts

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<sup>2</sup> The Employer also points to another Western Power facility in California at which the service technicians and parts department employees are represented in the same unit. The record does not indicate whether that resulted from agreement of the parties or a direction by the NLRB.

<sup>3</sup> There is no prohibition against all employees eating together. It is merely that since their clothing is dirty, the service technicians apparently do not want to make a mess of the other lunchroom.

requisitions, while the others deal with customers. The parts handlers maintain a computer record of the inventory, which they must access when selling parts or providing them to the service technicians. Parts handlers learn their job duties via on-the-job training sessions of a few minutes to several hours' duration and mentoring by more experienced parts handlers. At least one training session was conducted in Portland, Oregon, and was attended by several of the Auburn parts handlers. Parts employees may wear a shirt bearing the Employer's logo but are not mandated to do so. The Employer does not provide laundry service for them, however.

When a part is needed in order to effect a repair, the technician fills out a form and either gives it to the parts expeditor or simply leaves it on the parts counter. When the part is located, a parts handler may deliver it to the technician or the technician may simply check at the parts counter later to see if it's ready. The service technicians do not use the parts computer. Rarely does a technician enter the parts area, but he may do so in order to help transport a particularly heavy or awkward part back to the service area. Parts handlers do not assist technicians in diagnosing or repairing equipment and technicians do not assist parts handlers in their work other than as noted above. There is no evidence that parts handlers ever work outside the facility.<sup>4</sup>

There is no temporary interchange between the two groups of employees. During the last four or five years one parts employee transferred to the service department. He was the only one known to facility manager Blanton. The circumstances of his transfer were not made available. There have been no transfers from service to parts at this facility. The two groups of employees do not attend the same meetings and come together as groups only at such functions as the Employer's Christmas lunch. Both groups are hourly paid, though the service technicians' rate exceeds that of the parts handlers. The employees of both groups share the same working hours and fringe benefits.

### Analysis

The Joint Petitioners contend the service technicians constitute a separate craft unit, while the Employer disputes this status and would combine these employees with the parts handlers. In furtherance of its argument, the Employer cited such cases as *Harry Brown Company, et al.*, 86 NLRB 652 (1949) and *Graneto-Datsun*, 203 NLRB 550 (1973), for the proposition that it is the Board's declared policy to include service and parts employees in the same unit *unless* there is an affirmative showing that there is no substantial community of interest between the two groups of employees. In fact, however, in *Dodge City of Wauwatosa*, 289 NLRB 459, fn 6 (1986), the Board stated that while the two cited cases would appear to stand for that proposition, it was, in fact, "...overbroad and not entirely accurate..." Therein, the Board cited a number of cases in which it had found to the contrary, that is, found separate service and parts units to be appropriate.

The Board has described a craft unit in *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994), as "...one consisting of a distinct and homogeneous group of skilled journeymen craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment." The general rule is that where no history of collective bargaining on a more comprehensive basis exists, a craft or traditional departmental

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<sup>4</sup> When a service technician must work on equipment in the field, necessary parts are delivered to the site by the service technician or lowboy driver.

group having a separate identity of functions, skills and supervision, exercising craft skills or having a craft nucleus, is appropriate. *E.I. DuPont & Co.*, 162 NLRB 413 (1966); *E.I. DuPont & Co.*, 192 NLRB 1019 (1971). The test to determine these matters is found in *Burns & Roe*, supra at 1308, as follows:

In determining whether a petitioned-for group of employees constitutes a separate craft unit, the Board looks at whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; whether the employer assigns the work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits, and cross-training.

In the instant matter, there are a few strands connecting the service technicians to the parts handlers. They do work, for the most part, in the same facility which is led by a single manager, Blanton. They enjoy the same fringe benefits. There is a degree of functional integration in that the parts supplied by the parts department are needed by the service technicians in the repair of machinery, and the parts expediter secures parts for the technicians.

Factors warranting a separate unit of service technicians, however, far out-weigh those that would support a mixed unit of service and parts department employees. Thus, they are separately supervised. As the Board has pointed out in numerous cases, having different supervisors can result in employees having their complaints handled differently and can result in other differences in daily work life. *Towne Ford Sales*, 270 NLRB 311 (1984). The departments are physically separated and the two groups do not meet together for any work-related matters. Only the parts expediter has much direct contact with most technicians. The two groups do not share work tasks. The service technicians are expected to be able to diagnose and repair all manner of breakdowns and malfunctions, and, in this regard, the work assignments are made in accordance with their craft skills and may not be assigned to employees not possessing these skills. The service technicians must supply costly tools in order to perform this work, while parts department employees require no tools. The more onerous working conditions of the service technicians can be seen in the Employer's daily providing them clean coveralls, which are laundered at the Employer's expense. It can also be seen by the technicians' preferring to eat lunch in a separate lunchroom apart from employees whose jobs do not entail the same exposure to grease and dirt. Service technicians must undergo extensive on-going technical training in order to perform their daily tasks and at least some have been hired directly from trade schools.<sup>5</sup> In comparison, relatively little training is needed by parts handlers and none as a requirement for hire. There is no temporary interchange between the two groups and only one permanent transfer, and that in the rather distant past. Finally, while the Employer would cite the case of a Western Power facility in California having a mixed service/parts unit, the record does not reveal that it resulted from anything other than a stipulation of the parties or

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<sup>5</sup> The Employer makes much of the fact that the Employer does not require that its service technicians be "certified" in order to be hired or to perform their jobs. The record does not indicate whether there exists a certification program comparable to, for example, the National Institute for Automotive Service Excellence, mentioned in many automotive representation cases.

even recognition by the Employer, and it fails to provide facts upon which I might determine whether that situation is at all closely related to the instant matter.

Based upon the foregoing and the record in its entirety, I find a craft unit limited to the Employer's service technicians to be appropriate for purposes of collective bargaining and I shall direct an election in said unit.

The appropriate unit includes approximately 19 employees.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented jointly for collective bargaining purposes by INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCALS 302 and 612, AFL-CIO.

### **LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 4 copies of an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters must be filed with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Seattle Regional Office, 2948 Jackson Federal Building, 915 Second Avenue, Seattle, Washington, on or before April 29, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **NOTICE POSTING OBLIGATIONS**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by May 6, 1999.

**DATED** at Seattle, Washington, this 22nd day of April, 1999.

/s/ PAUL EGGERT

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